IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT JACKSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 06 C 00493
	)	
SHERIFF OF COOK COUNTY,	)	(*Judge David H. Coar)*
COOK COUNTY, ILLINOIS,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION A) TO ENFORCE SETTLEMENT AND B) TO ALLOW PAYMENT OF LATE CLAIMS

Plaintiffs, by counsel, move the Court to enforce the settlement and order defendants to pay all claims timely filed by March 31, 2008. Plaintiffs also request that the Court allow the payment of the 67 claims received by class counsel after the March 31, 2008 deadline.

Grounds for this motion are as follows:

1. The settlement agreement, as modified by the Court in its order of December 6, 2007, requires class members to file claim forms with class counsel by March 31, 2008.

2. On April 25, 2008, class counsel provided defendants with a list of 3106 timely filed claims. This list supplemented lists previously transmitted in December of 2007 (11,130 claims) and February of 2008 (839 claims), and brought to 15075 the total number of class members participating in the settlement.

3. Defendants have refused to pay any of the 3106 timely filed claims. Defendants appear to maintain that it was entitled to notice of the identity of all claimants by March 31, 2008. Nothing in the settlement agreement (copy attached as Exhibit 1) supports defendants' position. Nor is defendants' deadline consistent with the time required by class counsel to process claims.

4. Starting in December of 2007, and continuing through March 31, 2008, class counsel each day received between 100 and 150 letters from persons confined at the Cook County Jail and the Illinois Department of Corrections inquiring about their membership in the class. Reviewing these inquiries was time consuming: the records of the Illinois Department of Corrections often show a different date of birth than that which appears in the jail records. Names are often spelled

slightly differently, and prisoners are on occasion booked into the jail under a different name than that used in the penitentiary. Persons whose class membership could not be verified were advised of this fact and asked to submit additional information. Many persons were able to meet this burden and establish their membership in the class.

5. Class counsel completed review of virtually all of the timely submitted claims by April 24, 2008; counsel prepared a list of these 3106 timely filed claims and transmitted it to defendants' attorney on April 25, 2008.

6. In addition to about 120 timely filed claims which require further review to determine class membership, class counsel received 67 claims after the March 31, 2008 deadline. Most of these claims are from prisoners; at least one is from a person who was listed as homeless in jail records and who could not have received class notice by first class mail.

7. Funds from the settlement will revert to the County even if the Court allows the 67 late claims and even if class counsel is able to determine that each of the 120 "to be reviewed" claims was submitted by a class member. Under this scenario, the

Court will pay 15262 claims, and $145,600 from the settlement fund will revert to the County.

It is therefore respectfully requested that the Court order defendants to pay all claims timely filed by March 31, 2008 and that the Court also order defendants to pay the 67 claims received by class counsel after the March 31, 2008 deadline.

Respectfully submitted,

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Attorneys for the Plaintiffs

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT JACKSON, JOSEPH McGRATH, and DERRELL SMITH, *Plaintiffs*,	)	
-vs-	)	No. 06 CV 493
SHERIFF OF COOK COUNTY AND COOK COUNTY, ILLINOIS *Defendants.*	)	*(Judge Coar)*

CLASS SETTLEMENT AGREEMENT

This settlement agreement is entered into by all parties to this action through their respective undersigned counsel to resolve all matters at issue in this action.

RECITALS

1. **Nature of litigation.** Plaintiffs filed the above captioned action, for themselves and all others similarly situated, in the United States District Court for the Northern District of Illinois alleging violations of their Fourth and Fourteenth Amendment rights under the U.S. Constitution pursuant to 42 U.S.C. § 1983, resulting from STD testing of males processed into the Cook County Jail.

2. **Class Certification.** Pursuant to the Court's order of December 14, 2006, this case is proceeding as a class action for:

> All male prisoners at the Cook County Jail who, on and after January 27, 2004, were subjected to the non-consensual insertion of a swab into his penis as part of his admission to the jail.

3. **Important Rulings.** On March 23, 2007, the Court denied cross-motions for summary judgment and set the case for trial on June 18, 2007. The parties filed their joint pre-trial order on April 27, 2007. On May 18, 2007, the Court held a pre-trial conference and ruled on motions in limine.

4. **Settlement Conference.** Following the Court's ruling on the motions in limine, counsel for the parties met to discuss the possibility of settlement and agreed to a resolution of the claims asserted on behalf of the class and the individual claims asserted for the named plaintiffs. The proposed settlement takes into account the risks, delay and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that the litigation will be further protracted and expensive.

Class Counsel has investigated the facts and the applicable law and agrees with defense counsel that a reasonable estimate of the size of the class is thirty two thousand persons. Based on the foregoing, and upon an analysis of the benefits that this Settlement Agreement affords the class, Class Counsel considers it to be in the best interest of the class to enter into this Settlement Agreement.

After reaching the proposed settlement of the class and individual claims, counsel discussed issues of attorneys' fees and costs and reached an agreement as to these matters.

The proposed settlement has been presented to the Cook County Board, which approved the agreement on July 10, 2007.

5. **No Admission of Liability.** Defendants deny liability to Plaintiffs and the class for the claims alleged, but consider it desirable that the action and the claims alleged therein be settled upon the terms and conditions set forth in this Agreement, in order to avoid further expense and burdensome, protracted litigation, and to put to rest all claims, known or unknown, that have been or might be asserted by Plaintiffs or the class members against Defendant.

In consideration of the foregoing, Plaintiffs, Class Counsel and Defendants stipulate and agree that the claims of the named Plaintiffs and the class against Defendants should be and are hereby compromised and settled, subject to the approval of the court, upon the following terms and conditions.

TERMS

6. **Relief to the Class.** To resolve all claims at issue in this case, including but not limited to claims for compensatory damages and claims for attorneys' fees and expenses, the parties have agreed that, as part of the consideration for this Agreement, Defendants will establish a fund in the amount of $4,575,000.00 (Four Million Five Hundred and Seventy Five Thousand Dollars) ("Settlement Fund") in full settlement of all claims at issue in this case.

7. **Incentive Payments.** Each of the named plaintiffs will receive, subject to the approval of the court, an incentive award of $25,000.00 to be paid from the Settlement Fund. Defendants agree not to oppose Plaintiffs' petition for such incentive awards. Such awards shall be in lieu of, and not in addition to, any

other awards to which the named plaintiffs may be entitled under this settlement.

8. **Administration, Attorneys' Fees and Expenses.** The cost of administration of the settlement will be paid from the Settlement Fund, as will attorneys' fees and expenses. These costs include, but are not limited to, notice to the class, attempting to locate class members who are not reached by first class mail to their last known ascertainable address, processing of claim forms, and mailing of settlement shares to class members. The checks will be issued by and mailed by defendant Cook County using information ascertained by Class Counsel. The actual costs associated with such activities will be deducted from the $300,000.00.00 allocated for costs. The total amount of attorneys' fees will, subject to the approval of the Court, not exceed $1,000,000.00 (One Million Dollars), and the total costs of the litigation (including the cost of administering the settlement) will not exceed $300,000.00 (Three Hundred Thousand Dollars). The court will set the actual amount of costs and appropriate attorneys fees will be determined by petition to the court. Defendants have agreed not to challenge any request for fees and costs that may be made by class counsel up to the agreed amounts. Defendants have also agreed that the costs of mailing notice of this proposed settlement shall be advanced by defendant Cook County and deducted from the $300,000.00 allocated for costs.

9. **Payments to Class Members.** The parties, while recognizing that each class member has a distinct claim for damages, agree that the expense, uncertainty, and delay of providing each class member with an individual

determination of damages outweighs the benefits of distribution on an pro rata basis. The parties also agree that, based on judgments and settlements in comparable cases, payment of at least one hundred dollars would provide reasonable compensation for the injury being compromised in this settlement.

The actual amount to be paid to each class member will be determined after all claims forms have been received. The total amount paid will not exceed $3,200,000.00 (Three Million Two Hundred Thousand Dollars), and will computed by dividing the sum of $3,200,000.00 by the number of class members who timely returned claim forms. The parties do not believe that more than 32,000 claim forms will be returned and that each class member will therefore receive at least one hundred dollars. In the event that less than 16,000 claim forms are returned, each claimant will receive two hundred dollars and any funds remaining will revert back to Cook County, Illinois. The parties agree that, while it is unlikely that more than 32,000 claimants will respond to class notice, the Court will specifically reserve jurisdiction to decide, if more than 32,000 claims are filed, whether all claims in excess of 32,000 will be honored, or whether some claims should be disallowed based on probability calculations.

10. **Notice and Claims Procedures.**

a. On or before August 31, 2007, notice of the proposed settlement, information about the date and time of the fairness hearing, and notice of a right to opt-out (for those members that have not previously received such opportunity) will be sent by first class mail to the last ascertainable address of each class member. As used herein, "ascertainable" means the last known address as enhanced by the United States Postal Service change of address database. The cost of this notice will be paid in the first instance by defendant Cook County and, assuming that this settlement obtains final approval from the Court, will be deducted from the sum reserved for payment of costs and administration expenses..

b. The notice of the proposed settlement will be accompanied by a claim form. Class members will be required to return the executed form to the class action administrator on or before October 15, 2007.

e. Within 45 days following the final approval of this settlement, defendant Cook County will prepare checks for each class member who has submitted a timely claim. Defendant Cook County will also send these checks to each claimant by first class mail. The actual expense of check printing and mailing shall be deducted from the amount set aside in this settlement for costs and administration expenses.

f. Defendant Cook County will notify class counsel of any checks that are not delivered by the United States Postal Service. To the extent that funds are available from the amount set aside in this settlement for costs and administration expenses and for a 90 day period following the actual mailing of checks, class counsel shall make reasonable efforts to locate each such class member to whom the check was not delivered. Any costs incurred in this effort shall be reimbursed from the funds remaining from the amount set aside in this settlement for costs and administration expenses.

g. At the expiration of the 90 day period referred to in the preceding paragraph, all funds that have not been distributed to class members or which have not been utilized for costs and administration expenses shall remain with defendant Cook County.

13. **Enforcement and Reservation of Jurisdiction**. The parties agree that the Court will reserve jurisdiction to enforce the provisions of this agreement and that the Court may, for good cause, adjust and reset the dates set out in paragraph 10 above for a reasonable period following final approval of this settlement. If the Court approves the settlement, it will enter an order of dismissal that will dismiss the litigation with prejudice as to all Class Members, except those persons who have timely filed "opt out" forms. All people and entities who meet the Class Definition and who have not timely filed "opt out" forms ("Releasing Persons") shall be forever barred from prosecuting their own lawsuit asserting any of the claims at issue in this litigation and they and their heirs, executors, administrators, representatives, agents, partners, successors and assigns shall be deemed to have fully released and forever discharged the Released Persons (defined below) from all Released Claims (defined below).

> "Released Persons" means County of Cook and the Sheriff of Cook County each of their past or present directors, officers, employees, agents, Board members, attorneys, advisors, consultants, representatives, partners,

affiliates, parents, subsidiaries, related companies, and divisions, and each of their predecessors, successors, heirs and assigns.

"Released Claims" means any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever that the "Releasing Persons" may have or may have had, whether in arbitration, administrative, or judicial proceedings, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, that were alleged in this lawsuit. This release does not extend to any claim that may be, has been, or will be, asserted on behalf of the "Releasing Person" as an unnamed class member in any other action.

Agreed to, this 16th day of July, 2007 by the party representatives below who have affixed their signatures showing their assent to the above Class Settlement Agreement.

Plaintiffs' Counsel include the following attorneys who serve as Plaintiffs' Co-lead counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Francis J. Catania, Ass't State's Atty, 50 W Washington St, Room 500, Chicago, IL 60602, and Daniel F. Gallagher, Esq., Query & Harrow, Ltd., 175 W Jackson Blvd, Ste 1600, Chicago, IL 60604-2827, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: NONE.

/s/ Kenneth N. Flaxman

____

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